

Remarks:

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow. Claims 148, 155, 169, 179, 187, and 191 are currently amended. Support for the amendments can be found at least in Figs. 42-45 and pages 44-47 of the application as originally filed. Claims 1-147, 149-151, 156, 168, 170-178, and 180-186, and 192 have previously been cancelled. No new claims have been added. No new matter has been added. Accordingly, Claims 148, 152-155, 157-160, 164-166, 169, 179, 187m 191, 193-197, 201-203, and 205-218 (49 claims) will be pending in the present application upon entry of this reply and amendment.

A detailed listing of all the claims that are, or were, in the application, irrespective of whether the claims remain under examination in the application, is presented, with an appropriate defined status identifier.

Claim Rejections – 35 U.S.C. §112

On pages 2 and 3, para. 1 of the Office Action, the Examiner has rejected Claims 169, 179, 191, 217, and 218 under 35 U.S.C. §112, second paragraph as being indefinite.

The Examiner states that Claims 169 and 179 do not specify whether "a second panel" is part of the single sheet of web material. The Examiner also comments "It is not clear as to how a first panel can be 'coupled to said fold' while the bottom is integral or made from a single sheet of web material."

In response, Applicants have amended independent Claims 169 and 179 to clarify that the reclosable bag is composed of the single sheet of material that the first side panel is integral with the fold structure and that the bottom portion is from the same single sheet of material located intermediately between a first side panel and a second side panel of the single sheet of web material. The first paragraph of the Remarks of this Amendment cite support for these amendments.

On page 3 of the Office Action, the Examiner states with respect to Claim 191, (which depends from Claim 190 and independent Claim 187), some confusion exists with respect to the "opening" identified in independent Claim 187. In response, Applicants have amended Claim 191 to indicate that when the backing strip is coupled to the second panel of the sheet of web material the opening is closed after the reclosable bag is filled with at least one food product through said opening. Such language is consistent with Claim 187. Accordingly, independent Claim 169 and 179 and dependent Claims 191, as amended, are definite and in compliance with 35 U.S.C. §112, para. 2. Applicants respectfully request withdrawal of the rejection of Claims 169, 179, 191, 217, 218 under 35 U.S.C. §112, para. 2.

Applicants note that the claim amendments described above and intended to clarify the language used in the amended claim, and is no way intended as limiting or to obtain patentability of such claim. Accordingly, it is believed by the Applicants that the amendments made to the claims in no way impairs the ability of the Applicants to obtain full scope of such claim as may be available under the Doctrine of Equivalence.

Claim Rejections - 35 U.S.C. §103

On pages 4-13, para. 2 of the Office Action, the Examiner has rejected Claims 148, 152-155, 157-160, 164-166, 169-, 179, 187-190, 193-197, 201-203, 2-5-213, and 216-218 under 35 U.S.C. 3 §103(a) as being unpatentable over Stolmeier et al. in view of May, Belmont et al., McMahon, and Weeks and in further view of Buchman et al., Provan, and Malin.

On page 5 of the Office Action, the Examiner states "Stolmeier et al. is silent in reciting that the hood and the first, second, and bottom of the bag are made from the same piece of material." Stolmeier et al. is the principal piece of prior art that the Examiner suggests to be modified with various elements identified in other pieces of prior art including Buchman which was the principal piece of prior art in the previous Office

Action. Applicants note that Stolmeier et al. and Buchman et al. both require at least two separate pieces of web material to form the hood and bag of their inventions. The Examiner provides no reason why one ordinarily skilled in the art of bags would modify Stolmeier (or Buchman) in the first instance. There is nothing in the principal cited prior art to suggest or teach that a single web material for the hood and bag is needed, appropriate or desired.

Each of the independent claims of the present application originally stated that the bag comprises a single sheet of web material including a hood. Applicants have amended each of the independent claims, except independent Claim 212 to make it specifically clear that only a single sheet of web material is used for the hood and bag as disclosed and claimed in the present application. Such amendments are made partly in response to the Examiner's statement on page 7 of the Office Action that states: "If Applicants intended to only employ a single sheet of material for the entire bag, reciting, for instance, that 'said reclosable bag consists of a single sheet of web material' would provide clarification." Applicants submit that the amendments they have made to each of the independent claims, other than Claim 212 positively state that only a single sheet of web material is used for the hood and bag portion of the invention. Applicants note that independent Claim 212 specifically originally stated that a single sheet of material defines the front panel, rear panel bottom portion and hood portion of the reclosable bag of the present application.

In support of the Applicants' clarification of the claims in the present application, attention is directed to Figs. 1 and 2, as originally filed, that clearly show a single sheet of web material is used for the hood portion 11 (also referred to as the fold structure) and the bag 10 (referred to as the parent film). Further, Figs. 42-45 carry through such identification of a bag and hood and clearly illustrate that only a single sheet of material is used for the reclosable bag. Pages 44-47 of the application as originally filed further support the clarifying amendments to the independent claims of the present application.

In the figures, and in the text, elements 35 and 36 identify the side panel portions of the bag but such structure is still only from a single piece of web material.

Applicants submit that the Examiner has not made the analysis required by the Supreme Court in KSR; rather, that the Examiner's arguments, particularly in response to argument section of the present Office Action, that the combinations asserted is a "matter of design choice" are found in one of the 13 prior art references cited by the Examiner. Applicants submit that the Examiner is merely "cherry picking" individual elements from the cited prior art in an attempt to assert obviousness of that which is disclosed and claimed in the present application.

The fact that the principal prior art Stolmeier et al. does not teach that the hood and bag are from a single piece of web material flies in the face of reasonable analysis and assertion of *prima facie* obviousness on the part of the Examiner. Further, as stated above, in the previous Office Action mailed January 14, 2010 the principal prior art cited by the Examiner was Buchman et al. that also used at least two pieces of web material to form a hood and bag. Buchman et al. is again cited in the current Office Action as providing alleged support to the Examiner for his assertion of obviousness of that which is disclosed and claimed in the present application.

The Examiner has merely identified elements in the 13 various pieces of cited prior art that would required modification to Stolmeier et al. which in effect would reconstruct Stolmeier et al. and eliminate the features of Stolmeier et al. that are pertinent to the claims of Stolmeier et al. This is clearly not the analysis required by KSR; there is neither the explicit analysis required by KSR nor the identification of apparent reasons to make the combination suggested by the Examiner. Neither the current Office Action nor the previous Office Actions provide any reasons or factual basis that one skilled in the art will not only modify, but completely reconstruct and redesign the Stolmeier et al. reference to attempt to arrive at the claimed invention of the present application.

Establishing such factual basis is required by well-settled case law (at least the Graham case and the KSR case.)

The Examiner is merely using the present application, searching the words that have various elements cited in each of the claims of the present application to find pieces of prior art that recites such same elements. However, the Examiner has not provided why one ordinarily skilled in the art, without having the benefit of the present application in front of him, would select the same elements identified in the at least 13 pieces of prior art used by the Examiner in the present Office Action. Merely asserting a "design choice" is not a proper analysis.

Applicants believe that the Examiner is basing the rejection under 35 U.S.C. §103(a) on the mere identification in the prior art of individual components of claimed limitations in the present application. The Examiner has not made particular findings as to a reason a skilled artisan, with no knowledge of the claimed invention, would have selected the components for a combination in the matter claimed in the present application.

A reclosable food bag recited in each of the independent claims of the present application, considered as a whole, would not have been obvious in view of Stolmeier et al. and/or the other pieces of prior art since Stolmeier requires a second piece of material for the hood. That reference teaches away from what is disclosed and claimed in the present application. The rejection of independent Claims 148, 169, 179, 187, 212, and 214 over Stolmeier in view of the other prior art references under 35 U.S.C. §103(a) is improper. Therefore, Claims 148, 169, 179, 187, 212, and 214 are patentable.

Dependent Claims 152-155, 157-160, 164-166, and 216 which depend from independent Claim 148; dependent Claim 217 which dependent from independent Claim 169; dependent Claim 218 which depends from independent Claim 179; dependent Claims 188-191, 193-211 which depend from independent Claim 187; dependent Claim 213 which depends from independent Claim 212; and dependent Claim 215 which

depends from independent Claim 214, are also patentable. See 35 U.S.C. §112, para. 4. Applicants respectfully request the withdrawal of the rejection of Claims 148, 152-155, 157-160, 164-166, 169, 179, 187-190, 193-197, 201-203, and 205-218 under 35 U.S.C. §103(a).

The rejections of Claims on page 4, para. 2 of the Office Action; page 14, para. 3; page 15, para. 4 of the Office Action; page 17, para. 5 of the Office Action; page 26, para. 6 of the Office Action; page 27, para. 7 of the Office Action; page 27, para. 8 of the Office Action; page 35, para. 9 of the Office Action; and page 36, para. 10 of the Office Action all reject the various recited claims under 35 U.S.C. §103(a) with various combinations of the 13 cited pieces of prior art suggesting the modification of either Stolmeier et al. or Buchman et al. which as indicated, both require at least two pieces of web material to form the hood and bag of their recited inventions. Applicants reiterate their comments with respect to Stolmeier et al. (and Buchman) as stated above as being applicable to these other rejections.

Applicants submit that all the words in the claim must be considered in judging the patentability of a claim against a prior art. (See MPEP §2143.03). Since mere identification of elements disclosed and claimed in the present application as being found in one of 13 different pieces of prior art does not render the claims of the present application *prima facie* obvious. See MPEP §2143.01. The present application discloses and claims a reclosable bag that is structurally different than any of the cited prior art. Accordingly, Applicants request withdrawal of all rejections of all the claims under 35 U.S.C. §103(a).

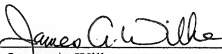
* * *

It is submitted that each outstanding rejection to the application has been

overcome, and that the application is in a condition for allowance. The Applicant respectfully requests consideration and allowance of all the pending claims.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted:

BY 
James A. Wilke
Attorney for Applicants
Registration No. 34,279

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 2100
Milwaukee, WI 53202
(414) 298-8383
Customer No. 22922